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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,289	05/11/2000	GALINA V MUKAMOLOVA	FHW-051US	9774

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EXAMINER

DEVI, SARVAMANGALA J N

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 04/23/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/445,289

Applicant(s)

Mukamolova et al.

Examiner

S. Devi, Ph.D.

Art Unit

1645

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 5, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 126-147 ~~is~~ are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 126-147 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Lack of Unity of Invention(s)

- 1) Claims 61-125 have been canceled.
New claims 126-147 are under prosecution.
- 2) **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
- 3) The instant invention lacks unity under PCT Rule 13.1 and 13.2:
 - I. Claims 126-131 and 144, drawn to a method for resuscitating bacterial cells by contacting with an isolated polypeptide having at least 20% to 50% identity with residues 117-184 of SEQ ID NO: 2, classified in class 435, subclass 252.1
 - II. Claims 126-131 and 144, drawn to a method for resuscitating bacterial cells by contacting with an isolated polypeptide with at least 50% identity with residues 224-318 of SEQ ID NO: 11, classified in class 435, subclass 252.1
 - III. Claims 126-131 and 144, drawn to a method for resuscitating bacterial cells by contacting with an isolated polypeptide of SEQ ID NO: 43, classified in class 435, subclass 252.1
 - IV. Claims 132-134 and 145-147, drawn to a pharmaceutical composition, a medium and a kit comprising a polypeptide with at least 20% to 50% identity with residues 117-184 of SEQ ID NO: 2, classified in class 424, subclass 190.1.
 - V. Claims 132-134 and 145-147, drawn to a pharmaceutical composition, a medium and a kit comprising a polypeptide having at least 50% identity with residues 224-318 of SEQ ID NO: 11, classified in class 424, subclass 190.1.
 - VI. Claims 132-134 and 145-147, drawn to a pharmaceutical composition, a medium and a kit comprising an isolated polypeptide of SEQ ID NO: 43, classified in class 424,

subclass 190.1.

- VII. Claims 135-139, drawn to a method for resuscitating bacterial cells by contacting with an antibody to an isolated polypeptide with at least 20% to 50% identity with residues 117-184 of SEQ ID NO: 2, classified in class 935, subclass 108
- VIII. Claims 135-139, drawn to a method for resuscitating bacterial cells by contacting with an antibody to an isolated polypeptide having at least 50% identity with residues 224-318 of SEQ ID NO: 11, classified in class 935, subclass 108
- IX. Claims 135-139, drawn to a method for resuscitating bacterial cells by contacting with an antibody to an isolated polypeptide of SEQ ID NO: 43, classified in class 935, subclass 108
- X. Claims 140-143, drawn to a method for resuscitating bacterial cells by introducing into cells a nucleic acid encoding a polypeptide with at least 20% to 50% identity with residues 117-184 of SEQ ID NO: 2, classified in class 935, subclass 52
- XI. Claims 140-143, drawn to a method for resuscitating bacterial cells by introducing into cells a nucleic acid encoding a polypeptide having at least 50% identity with residues 224-318 of SEQ ID NO: 11, classified in class 935, subclass 52
- XII. Claims 140-143, drawn to a method for resuscitating bacterial cells by introducing into cells a nucleic acid encoding a polypeptide of SEQ ID NO: 43, classified in class 935, subclass 52

4) Inventions I to XII lack unity of invention due to the absence of a special technical feature. The special technical feature which unifies the various inventions in the instant application is any one of the polypeptides recited in claim 126, or a homologue or variant thereof, as recited. Inventions I-III, VII-IX and X-XII are drawn to distinct methods. Inventions VII-IX and X-XII are drawn to a method that uses a product distinct from the product claimed in inventions IV-VI. Although a product of the invention and the first method of using and making the product is a permitted combination under PCT Rule 13.2, in the instant case, the special technical feature is already disclosed in the art. For instance, Cole *et al.* (*Nature* 393: 537-544, 1998) taught a polypeptide having at least 20% sequence homology with amino acid residues 117 to 184 of SEQ ID NO: 2. See the attached sequence search report. Therefore, the special technical feature is not a unifying

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feature. It is further noted that, technically, the absence of a special technical feature would permit the separation of the method of using and making the product from the product itself.

5) Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R. 1.143).

6) Any inquiry concerning this communication or earlier communication(s) from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. A message may be left on the Examiner's voice mail service. The Examiner can normally be reached on Monday to Friday from 7.15 a.m to 4.15 p.m. except one day each bi-week which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

April, 2003

SD
S. DEVI, PH.D.
PRIMARY EXAMINER